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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,752	12/20/2001	David W. Koenig	KCC 4742 (14, 442A)	2567

321 7590 01/15/2004

SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

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DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/028,752

Applicant(s)

KOENIG ET AL.

Examiner

C. Lynne Anderson

Art Unit

3761

-- Th MAILING DATE of this communication app ars on th cover sheet with the correspond nce address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6,8. 6) ☐ Other:

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 12-18, 24-27, and 33-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al. (5,957,906) in view of Bockow (5,650,157).

Roe discloses all aspects of the claimed invention but remains silent as to the composition of the lotion. Roe discloses a diaper, as shown in figure 1, for absorbing body waste. The diaper comprises a permeable liner 24, an outer cover 26, and an absorbent body. The diaper further comprises a lotion or skin care formulation positioned between the body-facing surface of the liner 24 and the outer cover 26, as disclosed in column 19, lines 19-21. Roe remains silent, however, to the composition of the lotion or ointment.

Bockow discloses a skin care formulation that is effective and stable, as disclosed in column 6, lines 12-20, and comprises yucca, as described in column 12, line 30. The skin care formulation is effective in treating diaper rash, as disclosed in column 13, lines 39-45.

It would therefore be obvious to one of ordinary skill in the art at the time of invention for the diaper of Roe to comprise the skin care formulation of Bockow in order to effectively treat diaper rash.

With respect to claim 12, the skin care formulation is applied to absorbent particles 172, and the yucca is therefore held within the absorbent body 170, as shown in figure 6.

With respect to claim 13, the skin care formulation is applied to absorbent particles 172, and the yucca is therefore held within the absorbent body 170 between its outer faces.

With respect to claim 14, the skin care formulation is applied to absorbent particles 172, and the yucca is therefore held on the exterior of the particles and consequently the outer faces of the absorbent body 170.

With respect to claim 15, the yucca is contained within a composition, the skin care formulation.

With respect to claims 16-18, Bockow remains silent as to the percent by weight of the composition comprised by the yucca. It would have been obvious to one of ordinary skill in the art at the time of invention to have the yucca comprise 0.001% to 1.0% by weight of the composition, since it has been held that where the general conditions of the claim are disclosed in the art, determining the optimum or workable ranges involves only routine skill in the art.

Art Unit: 3761

With respect to claim 24, a composition, the skin care formulation, comprising the yucca is positioned between the body-facing surface of the liner 24 and the outer cover 26.

With respect to claims 25-27, Bockow remains silent as to the percent by weight of the composition comprised by the yucca. It would have been obvious to one of ordinary skill in the art at the time of invention to have the yucca comprise 0.001% to 1.0% by weight of the composition, since it has been held that where the general conditions of the claim are disclosed in the art, determining the optimum or workable ranges involves only routine skill in the art.

With respect to claims 33 and 34, the article is a diaper, which is a type of infant care product.

With respect to claims 35-42, the application of the diaper comprises the method of inhibiting production of ammonia by applying a composition including yucca, as taught by Bockow.

Claims 19-23 and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al. (5,957,906) in view of Bockow (5,650,157), and further in view of Henderson (6,282,265).

Roe, as modified by Bockow, discloses all aspects of the claimed invention with the exception of the yucca being *Yucca schidigera*. Henderson discloses the use of yucca extract for the acceleration of metabolism, and the particularly preferred yucca extract is *Yucca schidigera*, as described in column 1, lines 33-36. It would have been

Art Unit: 3761

obvious to one of ordinary skill in the art at the time of invention to have the yucca extract of Bockow be *Yucca schidigera*, as taught by Henderson, in order to provide accelerated bacterial metabolism in organic waste.

With respect to claims 20 and 29, the skin care formulation is applied to absorbent particles 172, and the yucca is therefore held by the absorbent body 170, as shown in figure 6.

With respect to claims 21-23 and 30-32, Bockow remains silent as to the percent by weight of the composition comprised by the yucca. It would have been obvious to one of ordinary skill in the art at the time of invention to have the yucca comprise 0.001% to 1.0% by weight of the composition, since it has been held that where the general conditions of the claim are disclosed in the art, determining the optimum or workable ranges involves only routine skill in the art.

Claims 1-6, 12, 14-18, 24-27, and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ciraldo et al. (4,623,339) in view of Bockow (5,650,157).

Ciraldo discloses all aspects of the claimed invention but remains silent as to the composition of the lotion. Ciraldo discloses a diaper 10, as shown in figure 1, for absorbing body waste. The diaper 10 comprises a permeable liner 16, an outer cover 14, and an absorbent body 12. The diaper 10 further comprises a lotion or ointment 60 positioned between the body-facing surface of the liner 16 and the outer cover 14, as disclosed in column 2, lines 14-16. Ciraldo remains silent, however, to the composition of the lotion or ointment.

Bockow discloses a skin care formulation that is effective and stable, as disclosed in column 6, lines 12-20, and comprises yucca, as described in column 12, line 30. The skin care formulation is effective in treating diaper rash, as disclosed in column 13, lines 39-45.

It would therefore be obvious to one of ordinary skill in the art at the time of invention for the diaper of Ciraldo to comprise the skin care formulation of Bockow in order to effectively treat diaper rash.

With respect to claims 2, 3, 12, 14, and 24, the lotion 60 is placed between the liner 16/56 and the absorbent body 12 and spread within the diaper, as disclosed in column 2, lines 52-56. The lotion is therefore spread across the absorbent-facing surface of the liner 16 and the outer face of the absorbent body 12, as shown in figure 7. The yucca is therefore applied to the absorbent-facing side of the liner 16 and held by the absorbent body 12.

With respect to claims 4-6, 15-18, and 25-27, Bockow remains silent as to the percent by weight of the composition comprised by the yucca. It would have been obvious to one of ordinary skill in the art at the time of invention to have the yucca comprise 0.001% to 1.0% by weight of the composition, since it has been held that where the general conditions of the claim are disclosed in the art, determining the optimum or workable ranges involves only routine skill in the art.

With respect to claims 33 and 34, the article is a diaper, which is a type of infant care product.

With respect to claims 35-42, the application of the diaper comprises the method of inhibiting production of ammonia by applying a composition including yucca, as taught by Bockow.

Claims 7-11, 19-23, and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ciraldo et al. (4,623,339) in view of Bockow (5,650,157), and further in view of Henderson (6,282,265).

Ciraldo, as modified by Bockow, discloses all aspects of the claimed invention with the exception of the yucca being *Yucca schidigera*. Henderson discloses the use of yucca extract for the acceleration of metabolism, and the particularly preferred yucca extract is *Yucca schidigera*, as described in column 1, lines 33-36. It would have been obvious to one of ordinary skill in the art at the time of invention to have the yucca extract of Bockow be *Yucca schidigera*, as taught by Henderson, in order to provide accelerated bacterial metabolism in organic waste.

With respect to claims 8, 20, and 29, the lotion 60 is placed between the liner 16/56 and the absorbent body 12 and spread within the diaper, as disclosed in column 2, lines 52-56. The lotion is therefore spread across the absorbent-facing surface of the liner 16 and the outer face of the absorbent body 12, as shown in figure 7. The yucca is therefore applied to the absorbent-facing side of the liner 16 and held by the absorbent body 12.

With respect to claims 9-11, 21-23, and 30-32, Bockow remains silent as to the percent by weight of the composition comprised by the yucca. It would have been



Art Unit: 3761

obvious to one of ordinary skill in the art at the time of invention to have the yucca comprise 0.001% to 1.0% by weight of the composition, since it has been held that where the general conditions of the claim are disclosed in the art, determining the optimum or workable ranges involves only routine skill in the art.

### ***Response to Arguments***

Applicant's arguments filed 30 October 2003 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Roe et al. and Ciraldo et al.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 6,589,892 pertains to absorbent articles comprising compositions including yucca species.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Art Unit: 3761

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

*CWA*  
Cla  
January 7, 2004

*gk*  
**GLENN K. DAWSON**  
**PRIMARY EXAMINER**